

BIRMINGHAM CITY COUNCIL

CABINET

MONDAY, 03 DECEMBER 2018 AT 16:00 HOURS
IN SPECIAL MEETING - COMMITTEE ROOM 2, COUNCIL HOUSE,
VICTORIA SQUARE, BIRMINGHAM B1 1BB, [VENUE ADDRESS]

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

The Chairman to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 APOLOGIES

To receive any apologies.

3 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant pecuniary and non pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

3 - 6

4 EQUAL PAY STRATEGY 2018 - UPDATE - PUBLIC

Report of the Cabinet Equal Pay Sub Group.

5 OTHER URGENT BUSINESS

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

7 - 18

5A WASTE DISPOSAL CONTRACT INTERIM ARRANGEMENT AGREEMENT - PUBLIC

Report of Acting Corporate Director Place

6 **EXCLUSION OF THE PUBLIC**

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Exempt Paragraph 3

P R I V A T E A G E N D A

7 **EQUAL PAY STRATEGY 2018 - UPDATE - PRIVATE**

Item Description

8 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

8A **WASTE DISPOSAL CONTRACT INTERIM ARRANGEMENT AGREEMENT - PRIVATE**

Item Description



Item 4

Subject: **EQUAL PAY STRATEGY 2018 – UPDATE**

Report of: **Cabinet Equal Pay Sub Group**

Relevant Cabinet Member: **Councillor Ian Ward, Leader of the Council and Councillor Brigid Jones, Deputy Leader**

Relevant O &S Chair(s): **Resources O&S Committee – Councillor Sir Albert Bore**

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 Further to a Cabinet decision in August 2017, this report provides an update on the latest equal pay position in the Council, including updates on litigation and agreed settlement strategies.
- 1.2 An accompanying private report sets out exempt information in relation to the decision.

2 Recommendations

- 2.1 That the Cabinet note the contents of this report.

3 Background

- 3.1 This report is an update to the report to Cabinet of August 2017 dealing with equal pay, setting out the current status and proposals in relation to potential claims.

4 Options considered and Recommended Proposal

- 4.1 To manage any potential liability facing the Council in respect of equal pay claims that potentially could be brought by employees.
- 4.2 All equal pay claims against the Council, including those that are foreshadowed, require an agreed strategy.
- 4.3 The alternative is to not settle and prevent potential equal pay claims and to actively defend any such claims as and when they are brought against the Council.

5 Consultation

- 5.1 The following have been consulted: the Leader; the Deputy Leader; the Cabinet Member with Portfolio responsibility for Equalities; the Group Leader Conservative Group; the Group Leader Liberal Democrat Group; the Chief Executive (Head of Paid Service); the Chief Finance Officer (s.151); the City Solicitor; and the Director of Human Resources.

6 Compliance Issues:

6.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 6.1.1 The recommended decisions are in line with the Council's long-term financial planning and previous equal pay strategies

6.2 Legal Implications

- 6.2.1 The Equal Pay Act 1970 (Equality Act 2010) was an under-utilised piece of legislation at a time when it was not uncommon for employers to give different rates of pay as between men and women performing the same job or to reserve the higher paid jobs for men and the lower paid jobs for women. However, not until the implementation of the National Single Status Agreement in 1997 and the Agenda for Change Agreement in 2004 was attention focused on pay structures within Local Authorities and NHS Trusts.
- 6.2.2 Equal pay was brought into the public arena with legal firms issuing claims for equal pay in or about 2000 but not in Birmingham until 2006/7. Single Status in Birmingham was implemented with effect from 1 April 2008 and this was designed to remove unequal pay in the Council.

6.2.3 Equal pay law entitles a woman (a claimant) the right to be paid the same and enjoy the same contractual terms as male colleagues (comparators) who are performing work rated as equivalent or of equal value, unless the difference can be justified by a non-discriminatory reason.

6.3 Financial Implications

6.3.1 Any proposals will be carried out within existing resources identified for settlement of equal pay claims.

6.4 Procurement Implications (if required)

6.4.1

6.5 Human Resources Implications (if required)

6.5.1

6.6 Public Sector Equality Duty

6.6.1 The litigation risk of the different groups of equal pay claims is kept under review.

7 Background Documents

Report to Cabinet (public) dated 24 August 2017

Template to Accompany any Late Reports

PUBLIC REPORT

Item 5A

*Exempt
information
paragraph
number – if
private report.*

Report to: CABINET

Report of: Acting Corporate Director Place

Date of Decision: 03 December 2018

SUBJECT: WASTE DISPOSAL CONTRACT INTERIM
ARRANGEMENT AGREEMENT

Key Decision: Yes Relevant Forward Plan Ref: 005675/2018

If not in the Forward Plan: Chief Executive approved ☐x

(please "X" box) O&S Chair approved ☐x

Relevant Cabinet Member(s) Councillor Brett O'Reilly – Finance and Resources
Councillor Majid Mahmood – Clean Streets, Waste and
Recycling

Relevant O&S Chair: Councillor Albert Bore, Resources

Wards affected: All

REPORT

* To be completed for all late reports, ie. which cannot be despatched with the agenda papers ie. 5 clear working days' notice before meeting.

Reasons for Lateness

Subject to final discussion with Legal Services.

Reasons for Urgency

There is a requirement to submit this to 03 December 2018 Cabinet

Public Report
Birmingham City Council
Report to Cabinet
3rd December 2018



Item 5A

Subject: Waste Disposal Contract Interim Arrangement Agreement
Report of: Acting Corporate Director for Place
Relevant Cabinet Member: Cllr Brett O'Reilly – Finance and Resources
Relevant O &S Chair(s): Cllr Majid Mahmood – Clean Streets, Waste and Recycling
Report author: Cllr Sir Albert Bore, Resources O&S Committee
 Darren Share, Director – Waste Management

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 005675/2018		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 To inform Cabinet of the proposal to enter into a 5 year Interim Arrangement Agreement with Veolia for the continued provision of waste disposal services. A private report deals with the confidential and/or exempt information not covered in the public report and seeks approval of the proposal together with the relevant delegations.

2 Recommendations

- 2.1 That Cabinet:
- 2.1.1 Notes the contents of this report.
- 2.1.2 Authorises the Corporate Director of Place to enter into a 5 year Interim Arrangement Agreement for the provision of waste disposal services with Veolia.

- 2.1.3 Delegates authority to Director of Commissioning & Procurement in conjunction with the Corporate Director of Finance & Governance (or their delegate), Corporate Director of Place and the City Solicitor (or their delegate) in conjunction with the Cabinet Member for Finance and Resources and the Cabinet Member for Clean Streets Waste and Recycling, to finalise and agree the terms of the Interim Arrangement Agreement and execute all other necessary contractual documentation to effect this outcome.

3 Background

- 3.1 The Council first awarded the waste disposal contract to Veolia for Waste Disposal Services and the construction of a new incinerator plant on 9th July 1993 for the duration of 25 years; the contract commenced on 17th January 1994, expiring on 16th January 2019.
- 3.2 On 28th June 2016 Cabinet approved the recommendation of an overrun agreement with a stop date of January 2021. The rationale for this recommendation was that the overrun agreement would mitigate the risk of any delays in the procurement process which could result in the Council not having a waste disposal contract in place before the mobilisation of a replacement provider. The rationale, supporting agreement of this original overrun was to:
- ensure continuity of services through plant availability.
 - ensure asset condition was fit for purpose for the replacement contract.
 - reduce the Council's exposure to additional landfill tax.
- 3.3 A re-procurement strategy was developed during 2017 and agreed by Cabinet on 13th February 2018.
- 3.4 A project group was established in September 2016 consisting of 3 work streams, these being Procurement, Interim Arrangement Agreement and Asset (handback \ condition). The work streams consisted of representation from internal officers and external expertise from within the waste industry. The external representation has been provided by Bevan Brittan providing legal expertise, Price Waterhouse Cooper providing financial expertise, Fichtner Ltd acting as consulting engineers and Ricardo as Energy and Environment Consultants.
- 3.5 Findings (2017 Outage Inspection Report) from plant and site surveys undertaken by external technical experts in readiness for the hand back of assets to the Council identified a number of Essential Works which if not undertaken pose significant high risk to the Council in meeting its continuing obligations to manage waste disposal and reduce waste going to Landfill. During negotiations undertaken with the current provider and our technical experts it was concluded that it is not possible for all of these Essential Works to be completed within the timeframe that the approved 2 year Interim Arrangement Agreement allows.

An alternative option to enter into an enhanced Repairs and Maintenance Programme during the 2 year Interim Arrangement Agreement to include only

some of the Essential Works was considered in July 2018 by the Waste Management Service Programme Board but rejected as it would result in;

- a) Higher costs resulting from delivery of the enhanced R & M as the Essential Works are still required and the risk priced in by bidders in the procurement process due to the uncertainty over the condition of the assets.
- b) Significantly increased risk of plant failure impacting on level of waste sent to Landfill, an enhanced R & M still leaves the Council at risk and there will be extended delays to having the works completed while new providers then source and carry out the remaining works needed.

3.6 Following a Waste Management Service Programme Board in June 2018 the impact of not completing the essential works was discussed. This led to a review of detailed options for an Interim Arrangement Agreement. It was identified that an increased 5 year Interim Arrangement Agreement would facilitate and help effectively deliver the new long term strategic procurement and essential maintenance works. The rationale supporting this would include the fact that:

- a) The interim period will enable a suitably structured and thought through procurement process to be delivered by the Council over an appropriate time period for the recommissioning of the waste disposal service.
- b) All Essential Works will be undertaken at the Tyseley Energy Recovery Facility (ERF) during the interim period.
- c) The completion of the Essential Works that will be carried out during any extension will be advantageous to all bidders in any re-procurement exercise. For example by ensuring that the ERF plant will meet the agreed specification for handover to a new operator so bidders will not need to risk price for uncertainties in this regard
- d) The interim period will allow for suitable mobilisation arrangements to be made and/or secure consents (if required) for any future waste management sites ahead of re-procurement; and
- e) The interim period will enable greater information to be shared with future bidders about performance of the ERF, and potentially including access to the ERF during planned shutdowns for the purpose of conducting their due diligence in compiling tenders in a future procurement process.

4 Options considered and Recommended Proposal

4.1 An in house provision was considered but rejected, details are contained in the private report.

4.2 Exercise the decision of Cabinet on 28th June 2016 and extend the existing agreement with Veolia for a period of 2 years whilst the re-procurement exercise is undertaken. This option was rejected because the required Essential Works cannot be completed within this timeframe. In addition and given the current condition of the plant and the Essential Works required it is highly likely that bidders would include a significant risk premium in their pricing submissions under a new procurement.

- 4.3 Immediately commence re-procurement of a replacement waste disposal contract. This option was rejected because there is insufficient time to complete a tender process and consequently it may leave the Council with a period of time without a contract whilst this process is concluded and the reasons stated above.

5 Consultation

5.1 Internal

Officers from Waste Management, Finance, Commissioning and Procurement and Legal Services have been involved in the preparation of this report and support and recommendation.

5.2 External

- 5.2.1 There has been consultation with specialist Legal and Engineering Companies. The legal issues were raised and mitigated against and are explained in the Private Report due to their commercial nature. Their advice has been used to compile this report.

6 Risk Management

- 6.1 To enable the Council to mitigate the risk of Interim Arrangement Agreement in the procurement and implementation of the new arrangements for the treatment and disposal of waste.
- 6.2 To reduce the risk of plant failure and impact to Landfill which delaying Essential Works presents.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The Council approved and adopted the Council Plan 2018-2020, which identifies strategic outcomes for change in Birmingham (Children, Housing, Jobs and Skills and Health). This decision supports the priorities as follows:
- 7.1.2 We want Birmingham to be a great City to live in. This decision will enable improved facilities at household waste recycling centres at Tyseley, Perry Barr and Lifford Lane whilst reducing the risk of plant failure at the Tyseley ERF which would result in increased waste to landfill whilst any plant failures are rectified. This will not remove the risk of additional waste to landfill from other factors beyond our control e.g. changes in collection or waste flows.

7.2 Legal Implications

- 7.2.1 Maintaining the provision of waste disposal facilities facilitates the discharge of the Council's duty as a waste disposal authority under Section 51 of the Environmental Protection Act 1990.
- 7.2.2 The council has a duty to act as both a Waste Collections Authority and a Waste Disposal Authority under the Environmental Protection Act 1990.
- 7.2.3 Under S.111 of the Local Government Act 1972, the Council is entitled to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- 7.2.4 The Council has best value duty under the Local Government Act 1999 to improve the efficiency, economy and effectiveness of the service it delivers.
- 7.2.5 The legal implications that may occur as a consequence of taking the decision are detailed in the Private Report due to their commercial sensitivity.

7.3 Financial Implications

- 7.3.1 The Interim Arrangement Agreement will contribute towards addressing the existing budget pressures faced by the Service. The financial implications are commercially confidential and are set out in the private report.

7.4 Procurement Implications

- 7.4.1 The Procurement Strategy in support of the outline Municipal Waste Strategy 2017 – 2040 dealing with all long term procurement decisions was approved by Cabinet in February 2018 and this is unchanged apart from the timeline.

7.5 Human Resources Implications

- 7.5.1 It is intended that TUPE arrangements will not be applicable and this will be detailed in the Interim Arrangement Agreement once finalised.

7.6 Public Sector Equality Duty

- 7.6.1 Attached as appendix 1.

8 Background Documents

- 8.1 Appendix 1 - Public Sector Equality Duty Statement
- 8.2 Appendix 2 – Equality Impact Initial Assessment

Appendix 1

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none">(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) tackle prejudice, and(b) promote understanding
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none">(a) age(b) disability(c) gender reassignment(d) pregnancy and maternity(e) race(f) religion or belief(g) sex(h) sexual orientation

Item 5A

Title of proposed EIA	Proposed Interim Arrangement for Waste Disposal Services
Reference No	EQUA125
EA is in support of	Amended Function
Review Frequency	Annually
Date of first review	01/09/2019
Directorate	Place
Division	Waste Management
Service Area	Waste Management
Responsible Officer(s)	<input type="checkbox"/> Bethany Hughes
Quality Control Officer(s)	<input type="checkbox"/> Lesley Ariss
Accountable Officer(s)	<input type="checkbox"/> Darren Share
Initial equality impact assessment of your proposal	The proposal is to enter into a 5 year interim arrangement agreement with Veolia for the provision of waste disposal services. The request is that Cabinet, supplementary to the decision by Cabinet in June 2016, approves the principle of an additional 3 year interim arrangement agreement for the provision of waste disposal services and the authority to enter in a 5 year overrun agreement with Veolia.
Protected characteristic: Age	Not Applicable
Age details:	
Protected characteristic: Disability	Not Applicable
Disability details:	
Protected characteristic: Gender	Not Applicable
Gender details:	
Protected characteristics: Gender Reassignment	Not Applicable
Gender reassignment details:	
Protected characteristics: Marriage and Civil Partnership	Not Applicable
Marriage and civil partnership details:	
Protected characteristics: Pregnancy and Maternity	Not Applicable
Pregnancy and maternity details:	
Protected characteristics: Race	Not Applicable
Race details:	
Protected characteristics: Religion or Beliefs	Not Applicable

Religion or beliefs details:

Protected characteristics: Sexual Orientation

Not Applicable

Sexual orientation details:

Consulted People or Groups

Consultation with Senior management team, Legal Services, Procurement and Finance etc and Veolia.

Informed People or Groups

Senior management team, Legal Services, Procurement and Finance etc and Veolia.

Summary and evidence of findings from your EIA

No impact on any service users, employees or the wider community. It it to continue current working arrangements to ensure the following while work continues on the procurement for the long term disposal contract:

- ensure service continuity through plant availability.
- ensure asset condition was fit for purpose for the replacement contract.
- negotiate the Gate Fee and Capacity Fee.
- reduce exposure to additional landfill tax.

Submit to the Quality Control Officer for reviewing?

Yes

Quality Control Officer comments

Decision by Quality Control Officer

Submit draft to Accountable Officer?

No

Decision by Accountable Officer

Date approved / rejected by the Accountable Officer

Reasons for approval or rejection

Please print and save a PDF copy for your records

Yes

Content Type: Item

Version: 3.0

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